No. 81-2132

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

ESTATE OF FRANK W. JOHNSON,
Deceased.

KENNETH CORY, as State Controller,
Petitioner,

VS.

GEORGIA CAMPBELL,
Objector and Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of California, First Appellate District, Division Two

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QUESTION PRESENTED

The question presented is whether provisions of the United States Constitution deny to California jurisdiction to impose an inheritance tax upon the intestate transfer of personal property and non-trust real property on a California Indian reservation from one reservation Indian to another. Necessarily involved is the question of the authority of a state under our federal system of government to tax a transfer of property over which it has jurisdiction from one resident citizen to another.

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First Appellate District, Division Two

The petitioner, Kenneth Cory, Controller of the State of California, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal, First Appellate District, Division Two, entered in the above-entitled case on November 24, 1981.

OPINION BELOW

The Opinion of the California Court of Appeal, First Appellate District, Division Two is reported at 125 Cal. App.3d 1044 and at 178 Cal.Rptr. 823 (1981) and is printed in Appendix A hereto. Denials of petitions for rehearing and for California Supreme Court hearing are printed in Appendices B and C.

JURISDICTION

The judgment of the Court of Appeal of California, First Appellate District, Division Two, was entered on November 24, 1981. The Court of Appeal by taking no action denied a timely petition for rehearing on December 29, 1981. Thereafter, on February 17, 1982, the Supreme Court of California denied a timely petition for hearing. This petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 8, cl. 3:

> "The Congress shall have Power . . .
>
> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

Article VI, cl. 2:

> This Constitution and the Laws of the United States which shall be made in Pursuant thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law

of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATEMENT OF THE CASE

Decedent, who died intestate, and his mother, his sole heir at law, were members of the Hoopa Valley Indian Tribe and lived on the Hoopa Valley Indian Reservation in California. His estate consisted of personal property and fee patented real property located within the reservation. All real and personal property was owned outright. None was held in trust by the United States.

Decedent's nephew, Joe LeMieux, petitioned the Superior Court of California, Humboldt County, for authority to administer the estate. Bond was furnished, as required. Letters of Administration were issued pursuant to authority conferred by the California Court. The Court appointed inheritance tax referee reported inheritance tax due in the sum of $2,749. Objections were filed by Georgia Campbell, decedent's mother and sole heir, and were sustained by the court on the grounds that the intestate transfer of property described in the report was beyond the taxing jurisdiction of the State of California and therefore not a transfer subject to inheritance tax. From the resulting Order of no tax due, the State Controller appealed. The Court of Appeal affirmed and the California Supreme Court denied the Controller's petition for a hearing. No

court or party disputed the fact that the Inheritance Tax Referee correctly followed statutory California inheritance tax law in reporting to the Superior Court a tax due. Only a federal constitutional question was involved.

REASONS FOR GRANTNG THE WRIT

1. The decision below conflicts with United States Supreme Court decisions regarding the right of the states to tax transfers over which the states have jurisdiction

The decision below conflicts with United States Supreme Court decisions by wrongly holding that a State may not require a reservation Indian to pay a tax unless Congress has granted permission to do so.

This is erroneous. California's right to impose a tax on its residents by reason of a state created privilege to succeed to property on the death of another is an inherent attribute of state sovereignty. The United States Supreme Court recently held that an Indian Tribe has inherent tax authority as part of its power to govern. *Merrion v. Jicarilla Apache Tribe,* ..... U.S. ....., 102 S.Ct. 894, 71 L.Ed.2d 21 (1982).

The Hoopa Indian Reservation is part of the State of California. The Indians residing there are citizens and residents of California entitled to the benefits of such status, such as welfare benefits in case of need, just the same as other California residents. *Acosta v. County of San Diego*, 126 Cal.App.2d 455, 272 P.2d 92 (1954). While historically there have been many complex shifts in the legal relationships of the federal and state governments with Indian tribes [See *Organized Village of Kake v. Egan*,

365 U.S. 60 at 71-75, 825 S.Ct. 562, 7 L.Ed.2d 573 at 581-584 (1962)], it is now clear that ". . . even on reservations state laws may be applied unless such application would interefere with reservation self-government or would impair a right granted or reserved by federal law, . . ." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 at 148, 93 S.Ct. 1267, 36 L.Ed.2d 114 at 119 (1973).

The above quotation simply reflects the fact that the Federal Government created under the United States Constitution has only such powers as are granted by the Constitution. All other powers are reserved to the States and to the people. U.S. Const. amend. X. Within the limit of the granted authority, the Federal Government is supreme. U.S. Const., Article VI, cl. 2. The test of jurisdiction here is not whether Congress granted California the right to impose inheritance tax, as the Court of Appeal supposed, but whether this particular tax interferes with the exercise by the Federal Government of its paramount authority in connection with its relationship to the Indian Tribes.

A number of United States Supreme Court cases, starting with *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 at 170-171, 93 S.Ct. 1257, 36 L.Ed.2d 129 at 134-135 (1973) have established the following concept stated in the text, U.S. Department of Interior, Federal Indian Law, United States Government Printing Office, Washington 1958, p. 845:

> "To the extent that Indians and Indian property within an Indian reservation are not subject to State laws by reason of Federal limitations, they also may not be subject to State tax laws. (Footnote citation omitted)

> "We have seen, elsewhere, that State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress."

We have here a case where California probate and succession laws *are applicable* to these particular Indians on the Hoopa Reservation. It follows that they are subject to State tax laws on this succession.

The above quotation is not a holding that a State cannot impose a tax without Congressional permission. The right to impose the tax depends upon the state's jurisdiction over the activity, transaction or transfer sought to be taxed. Where California has such jurisdiction, it has the right to tax as an inherent attribute of state sovereignty. Until the opinion below was published, no reported decision struck down a state tax where the state had complete jurisdiction over the activity that was taxed. For example, *Moe v. Salish & Kootenai Tribes,* 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976), relied on in the decision below, struck down a Montana tax under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, because of conflict with federal statutes and not because of ". . . any automatic exemptions 'as a matter of constitutional law' . . ." See Footnote 17 at 425 U.S. 481.

Where property is in trust status under federal regulation and protection, succession on death to such property is pursuant to federal law and controlled by the Bureau of Indian Affairs, and the state may not impose an inher-

itance tax on such succession. 25 U.S.C. §§ 348 and 373; Title 43, Code of Federal Regulations, Subpart D of Part 4 of Subtitle A, §§ 4.200, 4.202 and 4.233; *Childers v. Beaver*, 270 U.S. 555 at 559, 46 S.Ct. 387, 70 L.Ed. 730 (1926); *Arenas v. United States*, D.C. Calif. 140 F.Supp. 606 (1956); *Kirkwood v. Arenas*, 243 F.2d 863 (9th Cir. 1957).

Where, as here, property is owned outright at death, succession to such property is not pursuant to federal law and control, but rather such succession is a privilege created by California. Therefore, California is entitled to tax such succession. *Plummer v. Coler*, 178 U.S. 115, 20 S.Ct. 829, 44 L.Ed. 998 (1900); *United States v. Mason*, 412 U.S. 391, 93 S.Ct. 2202, 37 L.Ed.2d 22 (1973); *Oklahoma Tax Commission v. United States*, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943); *West v. Oklahoma Tax Commission*, 334 U.S. 717, 68 S.Ct. 1223, 92 L.Ed. 1676 (1948).

There appears to be no reason why this general rule should not apply to cases involving residents of Indian reservations. An examination of the various state tax cases show considerations involved which vary from case to case such as particular treaty provisions and the nature of reservation government. Furthermore, ". . . decisions relating to other types of taxes are not readily transferable to the area of estate and gift taxation where the tax is imposed on the transfer of property rather than on the property itself or the income it generates." *United States v. Mason*, 412 U.S. 391 at 395-396, 93 S.Ct. 2202, 37 L.Ed.2d 22 (1973).

The court below saw the issue in this case as whether the General Allotment Act of 1887 (24 Stat. 390, 25 U.S.C. § 349) or Public Law 280, 28 U.S.C. Section 1360 gave juris-

diction to California to impose inheritance tax. Actually the only relevance of this legislation is to remove any possible doubt as to California's jurisdiction over the transfers on which tax is claimed.

2. The decision below raises significant problems concerning taxes to be paid by reservation Indians as well as important questions as to the basic tax jurisdiction of state governments under our federal system

This California decision, being the only published American decision exempting reservation Indians from tax on a transfer wholly subject to State jurisdiction, could set a dangerous precedent and create great confusion in other states as well as in California. Confusion is multiplied by the fact that the decision gives no indication of whether the exemption is based upon residence of the decedent on the reservation, location of the property on the reservation, or residence of an heir on the reservation or some combination of these factors. The "checkerboard" problem of tax jurisdiction discussed in *Moe v. Salish and Kootenai Tribes, supra,* is obviously greatly increased where it is necessary to consider all of these factors over what is the case if the transfers of property owned outright and subject to state jurisdiction are taxed and those of trust property where succession is under federal control are not taxed. Exempting reservation Indians from taxes imposed to pay for the benefits of an ordered society which they receive from the state necessarily increases the tax burdens of other state residents including Indians not residing on reservations. Hence, this cannot be in the nature of an exemption benefitting Indians in general. It has no

conceivable relation to reservation government, Indian commerce, or any federal purpose. Confusion in tax administration as well as an adverse effect on the ability of a state to secure funds to operate its government will result if the decision is allowed to stand. The holding that a state must secure permission from Congress to impose a tax on a transfer totally subject to state jurisdiction and control and based on a state created privilege sets a dangerous precedent in connection with the basic structure of our federal system of government contrary to the intent of the framers of the United States Constitution as shown in Amendment X.

JONCLUSION

A writ of certiorari should be issued to review the judgment and opinion of the California Court of Appeal in order to clarify the nature of our federal system as well as to set standards to guide the tax administration and courts of all of the states.

Dated: May, 1982

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(Appendices follow)

Appendix A

In the Court of Appeal of the State of California

First Appellate District

Division Two

1 Civ. No. 50867
(Super. Ct. No. 22147)

Certified for Publication

Estate of Johnson, Deceased

Georgia Campbell,
Objector and Respondent,

vs.

Kenneth Cory, as State Controller,
Petitioner and Appellant.

[Filed Nov. 24, 1981]

This is an appeal by the State Controller from an order of the Superior Court finding no inheritance tax owed to the State of California. The lower court held that the intestate transfer of property located on the Hoopa Valley Indian Reservation from a deceased resident of the reservation to his heir, also a reservation resident, was not within the taxing jurisdiction of the State. We agree.

Frank Johnson, a member of the Hoopa Indian Tribe, died intestate. He lived, worked and died on the reservation. He was never married and died without issue. All of his property passed to his mother, Georgia Campbell, also a resident of the Hoopa Valley Reservation and member of the Hoopa Tribe.

The decedent's nephew, Joe LeMieux, petitioned the Humboldt County Superior Court for letters of administration. An order for probate was entered, and letters of administration were issued. The inheritance administrator reported inheritance tax due in the amount of $2,849.00. This report was based upon the assessed value of real property located within the reservation and of a pension fund and life insurance benefits accrued by decedent during his lifetime of employment within the reservation. All of the real property listed in the inventory and appraisement is located within the boundaries of the Hoopa Reservation, and title was held by decedent in fee patent.[1]

Georgia Campbell, mother and sole heir of decedent, filed an objection to the imposition of an inheritance tax. She argued that, because the subject real property was located within the Hoopa Reservation and the pension and insurance benefits were payable to a reservation resident, the state was without jurisdiction to impose an inheritance tax.

The lower court upheld Ms. Campbell's objections. The court concluded that federal law, and particularly Section 4 of Public Law 280 (67 Stat. 589, 28 U.S.C. § 1360), did not give the State of California a general grant of authority to impose an inheritance tax upon Indians on the reservation.

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[1]The Hoopa Valley Indian Reservation was authorized by statute and created by executive order. A summary of the history of this reservation may be found in *Mattz v. Arnett* (1973) 412 U.S. 481, 493-494, and *Short v. United States* (Ct. Cl. 1973) 486 F.2d 561, 562-564.) Part of the land within the boundaries of the reservation is owned in fee by both Indians and non-Indians; part is held by the United States in trust for the Tribe, and the remainder is held in trust for individual Indians.

The sole issue before this court is whether, under either Section 6 of the General Allotment Act of 1887 (24 Stat. 390, 25 U.S.C. § 349) or Section 4 of Public Law 280, California has jurisdiction to impose an inheritance tax upon the intestate transfer of personal property and non-trust reservation real property from one reservation Indian to another.

I

The principles governing the resolution of this issue are well-known. " 'The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history.' " (*Rice v. Olson* (1945) 324 U.S. 786, 789, quoted in *McClanahan v. Arizona State Tax Comm'n* (1973) 411 U.S. 164, 168.) This policy, initially based upon a concept of Indian sovereignty, was first enunciated in the early case of *Worcester v. Georgia* (1832) 31 U.S. (6 Pet.) 515, 557, wherein the Supreme Court held that Indian nations were "distinct political communities having territorial boundaries within which their authority is exclusive . . ." (See also *United States v. Kagama* (1886) 118 U.S. 375, 383-384.)

More recently, the "trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption." (*McClanahan v. Arizona State Tax Comm'n, supra,* at p. 172.) Recent cases have defined the extent of federal preemption by analyzing federal treaties and statutes. (*Moe v. Salish & Kootenai Tribes* (1976) 425 U.S. 463, 475-479; *Mescalero Apache Tribe v. Jones* (1973) 411 U.S. 145, 148; *McClana-*

han v. Arizona State Tax Comm'n, supra, at p. 172.) Federal treaties and statutes, however, must be viewed against the "backdrop" of Indian sovereignty. As noted by the Supreme Court in *McClanahan v. Arizona State Tax Comm'n, supra* at pages 172-173, "[i]t must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government. Indians today are American citizens. They have the right to vote, to use state courts, and they receive some state services. But it is nonetheless still true, as it was in the last century, that '[t]he relation of the Indian tribes living within the borders of the United States . . . [is] an anomalous one and of a complex character. . . . They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.' [Citation] [Fns. omitted]." (See also *Bryan v. Itasca County* (1976) 426 U.S. 373, 376, fn. 2; *Moe v. Salish & Kootenai Tribes, supra,* at p. 475.)

It has also been the policy of the courts that legislation affecting Indians should be liberally construed in their interest and doubtful expressions resolved in their favor. (*Bryan v. Itasca County, supra,* at p. 392; *McClanahan v. Arizona State Tax Comm'n, supra,* at p. 174.) While the assimilationist policy prevailing at the beginning of this

century must be considered in analyzing statutes which were enacted at that time, it should also be kept in mind that present federal policy favors the strengthening of tribal self-government. (*Bryan v. Itasca County, supra* at p. 389, fn. 14.) "[C]ourts 'are not obliged in ambiguous instances to strain to implement [an assimilationist] policy Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship'." (*Ibid.*; see, generally, A Report of the United States Commission on Civil Rights (1981) *Indian Tribes: A Continuing Quest for Survival* pp. 20-23.)

"[I]n the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. Arizona State Tax Comm'n, supra,* lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent." (*Mescalero Apache Tribe v. Jones, supra,* 411 U.S. 145, 148; see also *Moe v. Salish & Kootenai Tribes, supra,* 425 U.S. at pp. 475-476.)

II

With these principles in mind, we now turn to an analysis of applicable federal statutes. For the reasons that follow, we reject appellant's contention that, under Section 6 of the General Allotment Act of 1887, the issuance to decedent of a fee simple patent to his land rendered the intestate transfer of his property subject to state inheritance tax.

Traditionally, the right of possession to Indian land was vested in the tribe, rather than in individual members. (U. S. Dept. of Interior, *Federal Indian Law* (1958) pp. 757-758.) The General Allotment Act was designed to break up the traditional reservation by allotting specific parcels of land in severality[2] to Indians living on reservations and with tribal consent to sell off surplus lands. For a period of 25 years, the allotted lands were held in trust patent. Once the lands were patented in fee, i.e. given over by the government in fee simple to individual Indians, the Indian had "the benefit of and [was] subject to the laws, both civil and criminal, of the State or Territory . . ." (25 U.S.C. § 349: U.S. Dept. of Interior, *Federal Indian Law, supra,* at p. 785.)

In *Moe v. Salish & Kootenai Tribes, supra,* at pages 477-479, the Supreme Court rejected the contention that state jurisdiction to impose cigarette sales taxes and personal property taxes was among the civil laws to which an Indian fee patentee and his property had been made subject by the General Allotment Act where the reservation was composed of both fee and trust lands. The Court pointed out that the policy of allotment of lands to individual Indians and sale of surplus reservation land to non-Indians had been repudiated in 1934 by the Indian Reorganization Act (48 Stat. 984, amended and codified as 25 U.S.C. § 461 et seq.) and concluded that "Congress by its more modern legisla-

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[2]Severality refers to the holding of property solely, separately and individually. A tenant in severality holds the land exclusively and solely for the duration of his or her estate without any other person holding joint rights. (See *Crain v. Foster* (1959) 322 S.W.2d 443, 444.)

tion has evinced a clear intent to eschew any such 'checkerboard' approach within an existing Indian reservation . . ." (*Id.* at p. 479.)

Here, as in *Moe*, the reservation is composed of both trust and fee lands. Although the present case involves an inheritance tax while *Moe* involved a cigarette sales tax and personal property taxes, we deem this a distinction without a difference, for, in each case, a distinction based upon the fee or trust status of land would undermine the territorial integrity of a reservation. (See, generally, Craig, *The Indian Tax Cases—A Territorial Analysis* (1979) 9 N.M. L.Rev. 221, 244-245.)[3]

We also reject appellant's contention that Section A of Public Law 280 (67 Stat. 589, 28 U.S.C. § 1360) granted California the authority to impose the tax in question.

In 1953, the policy of encouraging Indian self-government and tribal integrity as reflected in the Indian Reor-

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[3]Appellant maintains that, because lands held by fee patent are subject to property taxes, the intestate transfer of a fee patentee's property should also be subject to inheritance tax. Whether such lands are subject to a property tax (see, e.g. *Chatterdon v. Lukin* (Mont. 1945) 154 P.2d 798, cert. den., 325 U.S. 880; *United States v. Spaeth* (Minn. 1938) 24 F.Supp. 485), however, is not the issue, for an inheritance tax is not a tax upon the property itself but rather upon its transfer. (See Rev. & Tax. Code, §§ 13401, 13601; 5 Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 214, pp. 4183-4184.)

We are aware that a federal court in *Nash v. Wiseman* (W.D. Okla. 1963) 227 F.Supp. 552 has concluded that inherited allotted lands which are held in fee patent by the decedent are subject to federal estate taxes. That case, however, was decided before the United States Supreme Court's decision in *Moe*.

ganization Act received a setback by the enactment of Public Law 280. Here, Congress, in an apparent attempt to reestablish a policy of assimilation without entirely abandoning the Indian to state authority and control, transferred to five willing states, among them California, and offered to all others, civil and criminal jurisdiction over reservation Indians.[4]

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[4]Section 4 of Public Law 280 in part states:

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian Country affected
Alaska	All Indian country within the State
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein."

Public Law 280 has been narrowly construed in light of the modern trend to reaffirm the Indians' semi-autonomous status as a separate people with the power of regulating their internal and social relations subject to dimunition only by express Congressional enactment. (See *United States v. Mazurie* (1975) 419 U.S. 544, 558.) The Indian Civil Rights Act of 1968 (82 Stat. 77, 25 U.S.C. §§ 1301 et seq.) is further indication of the shift in federal policy away from assimilation toward the strengthening of tribal institutions and fostering of economic development and stability. (See Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians* (1975) 22 UCLA L. Rev. 535, 550.)

In *Bryan v. Itasca, supra,* 426 U.S. 373, the United States States Supreme Court examined the State of Minnesota's imposition of a personal property tax on a mobile home located on Indian trust land. In an unanimous opinion, the Supreme Court observed that such a tax was precluded in the absence of express congressional consent and held that Section 4 of Public Law 280 did not constitute such consent. (*Id.* at pp. 377, 390-393.)

The Court in *Bryan* undertook an extensive analysis of the legislative history of Public Law 280 and determined that the primary concern of Congress was "with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." (*Id.* at p. 379.) The Court concluded that the provision for state civil jurisdiction was primarily enacted "to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians and

between Indians and other private citizens, by permitting the courts of the States to decide such disputes . . ." (*Id.* at p. 383.) Thus, the court held, the wording in section 4(a) stating that the civil laws of the named states will "have the same force and effect within such Indian country as they have elsewhere within the State" authorizes application by the state courts of their rules of decision to decide disputes but does not authorize application of general state civil regulatory control over Indian reservations. (*Id.* at p. 384.)

After examining committee reports and floor discussions in both houses, the Court noted the total absence of any mention or discussion regarding Congress' intent to confer upon the states authority to tax Indians or Indian property on reservations. (*Id.* at p. 381.) Of special import to the instant case is the *Bryan* court's conclusion with regard to Section 4(b) of the Public Law 280, excluding taxation of any real or personal property belonging to an Indian held in trust or subject to a restriction against alienation, that "even if read narrowly to apply only to taxation levied against trust property directly, § 4(b) certainly does not expressly authorize all other taxation of reservation Indians." (*Id.* at p. 391.)

The court in *Bryan* made it clear that a statute must express Congressional intent to abolish the long-standing rule of Indian tax immunity in clear and unequivocal language. (*Id.* at p. 392.) Consistent with the reasoning and holding of that case, we conclude that there is nothing in Public Law 280 that expresses legislative intent to authorize the imposition of the tax in question.

Appellant contends that inheritance taxation is a tax upon a privilege rather than upon an inherent right and therefore distinguishable from other prohibited reservation taxes. A similar distinction, however, was rejected in *Washington v. Confederated Tribes* (1980) 477 U.S. 134, 163, wherein the Supreme Court held that the State of Montana might not impose a motor vehicle tax on vehicles owned by a tribe or its members and used both on and off the reservation, and thus circumvent the holding of *Moe* and *McClanahan*, by labelling the excise tax as a "privilege" tax.

Appellant contends that *West v. Oklahoma Tax Comm'n* (1947) 334 U.S. 717 and *Oklahoma Tax Comm'n v. U.S.* (1924) 319 U.S. 598 control in the instant case. Both of these cases expressed the proposition that property that is restricted or held in trust is not necessarily immune from inheritance taxation. (*West v. Oklahoma Tax Comm'n, supra,* at p. 726; *Oklahoma Tax Comm'n v. U.S., supra,* at pp. 601-602.) *Oklahoma Tax Comm'n* relied upon the old doctrine of assimilation—that the Oklahoma Indians are actually citizens with little to distinguish them from other citizens. (*Id.* at p. 603.) The Court held that restricted cash and securities and miscellaneous personal property were taxable but that allotted lands exempt from direct taxation were also exempt from inheritance tax. (*Id.* at p. 611.) *West* applied the holding of *Oklahoma Tax Comm'n* to the succession of property held in trust. (*West v. Oklahoma Tax Comm'n, supra,* at p. 726.)

The facts of those cases, however, are clearly distinguishable from those of the instant case, for the Osage

Indians, the Indians involved in those cases had no effective tribal authority and had been assimilated into the general community. (*Oklahoma Tax Comm'n v. U.S., supra,* at p. 603; see also *United States v. Mason* (1973) 412 U.S. 391, 396, fn. 7; *McClanahan v. Arizona State Tax Comm'n, supra,* 411 U.S. 164, 167-168, 171.) Moreover, those cases did not arise under either the General Allotment Act or Public Law 280.

For the foregoing reasons, we hold that neither the General Allotment Act nor Public Law 280 confers jurisdiction upon California to impose an inheritance tax upon the intestate transfer of personal property and non-trust reservation real property from one reservation Indian to another. Our reading of the federal statutes is consistent with the rule of construction that " 'statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.' " (*Bryan v. Itasca, supra,* at p. 392, quoting *Alaska Pacific Fisheries v. United States* (1918) 248 U.S. 78, 89.)

The order of the trial court is affirmed.

CERTIFIED FOR PUBLICATION

Smith, J.

WE CONCUR:

Taylor, P. J.

Rouse, J.

Appendix B

Court of Appeal
State of California [Letterhead]
First Appellate District
December 29, 1981

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Re: 1/Civil 50867, Estate of Frank W. Johnson
Division Two

Dear Counsel:

This is to advise you that the court took no action on appellant's petition for rehearing. The petition is therefore deemed to be denied pursuant to Rule 27(e) of the California Rules of Court.

Very truly yours,

/s/ C. Porter
Clerk

Appendix C

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

Feb 17 1982

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 50867
Georgia Campbell

vs.

Kenneth Cory etc.

Respectfully,

Clerk